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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/080,781

02/22/2002

Lixiao Wang

S63.2-5424-US05

3019

490 7590 03/05/2009
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EXAMINER

MIGGINS, MICHAEL C

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/080,781	Applicant(s) WANG ET AL.	
	Examiner Michael C. Miggins	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/28/02, 8/22/05, 8/29/05, 6/16/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of claims 1-15 and 21-22 in the reply filed on 2/6/09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4-6 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US 5500180) in view of Eutenuer (US 5207700).

Anderson discloses a medical device comprising a balloon, the balloon formed from a block copolymer thermoplastic elastomer polymer, the polymer being characterized by a flexural modulus of about 190,000, shore D hardness of 74 and wall strength of 15,000 to 40,000, and an ultimate tensile strength of 6,980, a nominal diameter of 3.0 mm (column 7, lines 25-47, column 8, lines 1-50 and column 11, lines 39-51).

Anderson fails to disclose a single wall thickness of less than 0.001 inches and further comprising a catheter having a distal end, said balloon being mounted on the catheter near said distal end.

Eutenuer discloses a single wall thickness of less than 0.001 inches, and further comprising a catheter having a distal end, said balloon being mounted on the catheter near said distal end (column 2, lines 58-66, column 5, lines 20-40) in order to provide thin walled balloons for stenosis (column 1, lines 24-54).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a single wall thickness of less than 0.001 inches and further comprising a catheter having a distal end, said balloon being mounted on the catheter near said distal end in Anderson in order to provide thin walled balloons for stenosis as taught or suggested by Eutenuer.

4. Claims 3 and 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US 5500180) in view of Eutenuer (US 5207700), as applied to claims 1-2, 4-6 and 21-22 above, and further in view of Foy et al. (US 4331786).

Anderson fails to disclose an ultimate elongation of about 300% or higher and the polyether-block-amide copolymer recited in claims 7-15.

Foy discloses an ultimate elongation of about 300% (column 7, lines 15-20) or higher and the polyether-block-amide copolymer recited in claims 7-15 (column 2, line 1 through column 6, line 21) in a balloon (column 2, line 9) for the purpose of providing improved mechanical properties (column 1, lines 35-42).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided an ultimate elongation of about 300% or higher and the polyether-block-amide copolymer recited in claims 7-15 in the balloon of Anderson in order to provide improved mechanical properties as taught or suggested by Foy.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-15 and 21-22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 5,556,383. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-17 of US 5556383 encompass the scope

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recited in claims 1-15 and 21-22. Claims 1-17 of US 5556383 recite applicant's recited medical device comprising applicant's recited polyether-block-amide copolymer having the recited flexural modulus, shore D hardness, single wall thickness and wall strength (see especially claims 1 and 8-10 of 5556383).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Miggins/

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Primary Examiner, Art Unit 1794

MCM
March 2, 2009